

THE PROGRESSIVE LEGAL THEORY IN THE IMPLEMENTATION OF LAW ENFORCEMENT BY THE LAW ENFORCER

(POLICE, PROSECUTOR, JUDGE)

Agung Tri

ABSTRACT

Criminal Law Policy in tackling crime-based brain ware which hereinafter called White Color Crime uses a progressive juridical approach equipped with examples and case studies, it is intended to 1. Know and analyze the policy formulation of White Color Crime and applicable sanctions imposed now 2. Contribute material thought to the Legislators in formulating the law, especially in the crime crime issue of White Color and the application of sanctions in the future. The results of this study will show that: 1. The Formulation of Crime White Crime and its applicable sanctions. - Criminal action in the field of Limited Liability Company by Corporation is regulated and formulated in Act No. PT. 1 Th 1995 as amended to Law no. 40 Th. 2007 and Law no. 8 Th 1995 concerning the Capital Market and Law no. 25 Year 2007 regarding Investment. However, the definition of White Color Crime is not formulated in a limitative way, it is to open the discourse and opinions of legal practitioners to interpret White Color Crime in an Open and Progressive manner. - The legal subject of White Color Crime under Article 50 of the Law. No.41 of 1995 is a person in the sense of both personal, legal entity and business entity, arranged in the same few articles are not distinguished either the article of personal or corporations so that corporations are subject to the same personal sanctions threat. Capital Market which has full authority in the field of corporate supervision to prevent the increasing intensity of crime White Color Crime. Not yet accommodated in the Capital Market law in detail and specifick therefore, it becomes a legal loophole that can be exploited by the perpetrator because it is not strictly regulated in the law so that it escapes from lawsuits and legal pitfalls. - Criminal threats imposed are cumulative criminal sanctions, principal penalties, imprisonment and penalties of fines, additional penalties for committing constructive crimes and sanctions for banning life-long businesses and entering the DOT category. - Criminal penalty for corporation not yet equipped with special rule. The application policy for the formulation of White Color Crime and the imposition of sanctions is felt not to fulfill the aspect of certainty and justice. This occurs in various cases of White Color Crime that occurred in the jurisdiction of the DKI Jakarta District Court (North, East, West, South and Central). 2. The upcoming Crime Whute Color crime formulation policy is expected to publish publicly the subject of the criminal law of the White Color Crime (person and legal entity or corporate body or corporation formulated in comprehensive articles); 3. Criminal and Indemnification Sanctions shall be formulated in an open and cumulative manner, the object is clear and harsh sanctions either to be taken over by the Government or deprived of State for Subsequently submitted to the Capital Market.

Keywords: Capital Market, crime, White Color Crime

Background

This present era is a materialistic era, where a person's social status becomes a measurement; both succeed in material and in social strata. This encompasses every aspect of public life along with the rapidly advancing economic development and knowledge that is not in line with the development of legal science which must always be up date to accelerate its progressive. Likewise, the development of crime is also increasingly

worrisome because one's intelligence is not balanced with high morality and good religious knowledge so that crime appears in terms of BLUE COLOR CRIME AND WHITE COLOR CRIME. This era gives birth to an ambitious man blindly by justifying all the ways that should be prevented, when will not cause a legal crisis in addition to the low integrity and professionalism of law enforcement agencies working on the interests of special interests, conflict of interest or order a certain order so that overall affect the joints the joint of nation and state, this is what causes injustice.

To protect the false balances of legal joints, it should start from law enforcement agencies whether from the police, prosecutor, judiciary or the Supreme Court starting from first-level court judges, high courts, and bureaucratic bureaucrats with HONEST PROPHECY and HONEST. These two things are an informal leader, both interlink figures and academics.

As we all know with the Vision of the Supreme Court is "the realization of a great judicial body"¹. Departing from that vision, especially the great understanding is dignified, firm and indiscriminately in carrying out its duties. The spearhead of the judicial body is the judges, especially the first-level judges who know clearly the essential issues (facts and data), so that the judge as the executor of the judicial duty may bring about an authoritative, accountable and independent judiciary as the supreme duties of the supreme judge are "ENFORCING LAW AND JUSTICE".²

A Dutch legal expert, Prof. Taverne declared that "with good law enforcement, bad law will show good justice in the community. It is related to the slogan in one of the courts in England which reads "give me a good judge, even I have bad laws in my hand. Bad law in this sense can still be improved while the character and behavior of judges, especially morals, is the most fundamental thing in law enforcement, so it must be firm, stable, and mature in the application of law and decisions even if there is internal or external intervention in its application.

The role of judges in an increasingly dynamic world is so dynamic, thus a judge is always renewed knowledge and all his activities must always follow the times. The discovery of a new law must be created, so that progressive law is the answer. This is in line with Article 5 paragraph (1) of Law no. 48 Year 2009 jo. Article 22 The compilation of Islamic law, affirms that "the judge must dig, follow and understand the legal values and justice live in community". The positive law will be effective if it is in harmony with the law that lives in society. It is in accordance with the theory of Sociological Jurisprudence namely "Legal Made Should Have Regarding Legal Living in the Local Law (living law). We know that the law making is human. In this case is the legislature and the judge as the implementer of the law so that the role of judges in making decisions besides based on the law but in acting must do legal renewal as the view of progressive law experts that the law for human not the other way around. On this basis, this paper discusses the Progressive Legal Theory in the Implementation of Law Enforcement by the Law Enforcer (Police, Prosecutor, Judge)

Problems

-
- 1 Mahkamah Agung RI, *Cetak Biru Pembaharuan Peradilan*, 2010-2035, Jakarta, Mahkamah Agung RI, 2010, Hlm. 13-14.
 - 2 Abdul Manan, *Penerapan Hukum Acara Perdata Dilingkungan Peradilan Agama*, Prenada Media, Jakarta, 2005, Hlm. 291
-

Based on this background, the paper discussed in these following issues:

1. Law enforcement according to Progressive Law theory.
2. Judge's verdict according to Progressive Law theory.
3. Implementation of Progressive Law theory today.

DISCUSSION

Progressive Legal Theory In Law Enforcement

1. Progressive Legal Theory

Progressive law can simply mean the idea of genius, clear, revolutionary and enlightening so that it can be said a series of radical actions that can change the legal system, so that the law is more useful and useful.

It is firstly declared by Prof. Satjipto Raharjo, he affirmed that "The Law is made for human, not the opposite one". The consistency of his holistic thinking led him to think beyond the positivistic thinking of law even though trying to incorporate the legal science of the social sciences as a progressive step.³

According to Prof. Satjipto Raharjo, the basic philosophy, namely the law for humans, so that humans become the determinant and the point of law orientation. Therefore, the law served human because law is not a free institution from human interest. It can be said that the quality of law is determined by its dedication to human welfare. Under this paradigm progressive law embraces the ideology of pro-justice and pro-people. Progressive law is part of the searching process for the truth. According to Prof. Satjipto Raharjo, there are 3 (three) ways to do rule breaking, namely:

- a. Spiritual intelligence to rise from the fall of the law
- b. Do a deeper search for meaning
- c. Not only according to the principle of logic but with a conscience, concern and order to the weak group.⁴

Let the judge as courageous law enforcement begin to change the paradigm from merely deciding the case to the judge's paradigm in solving the case.⁵

Progressive legal thinking, felt able to answer the needs of the people of Indonesia.⁶

2. Progressive Law Enforcement

Law enforcement institutions in Indonesia consist of police, prosecutor, judiciary and lawyers. Judges have a dominant role in deciding cases so it is obligatory to provide a sense of justice for every justice seeker, who is right and who is wrong. The demands are integrity, morals, and ethics and have good legal analysis skills as well as mature and progressive thinking in the decision. The judge must be neutral, unable to inter-

3 Suteki, *Masa Depan Hukum Progressif*, Thafa Media, Yogyakarta, 2015, Hlm. 4

4 Suteki, *Op. Cit*, Hal. 38

5 *Ibid.*, Hal. 40

6 Achmad Ali, 2001, *Keterpurukan Hukum di Indonesia*, Ghalia Indonesia, Jakarta 2001, hlm 10.

vene and free from conflict of interest and may not take sides with either party in court.

Such a prosecutor should take sides with the interests of the state and try to prove the defendant's wrongdoing with the reasons for the enforcement of law and justice, while the lawyer sided with the client's interests so as to try to find weaknesses and relief of prosecution, also for the same reason that for the sake of law and justice.⁷

In fact in Indonesia, law enforcer is included as judge in process of law enforcement. It is mostly not based on progressive law thinking but based on legal thinking positivism-legal by looking at law only in the form of law and pursuing legal certainty without heeding social justice and human prosperity.

The judge's decision is the crown of judges, the verdict is a statement of the judge as outlined in written form and is pronounced in the hearing open to the public as a result of examination of a case.⁸ Three very essential typologies in judge's verdicts are fairness (*gerechtigheit*), benefit (*zwachmatigheit*), and certainty (*rechtsecherheit*). Thus the progressive judge's orientation is the value of justice and truth which not only implements procedures and implements appropriate articles of law but in fact many social variations are also to be considered.⁹ In principle the judges' ruling as a place of law reformation, the judges are required do legal renewal so that must be expert and courageous to do "judicial activism" which includes the skills to always find the values of the unwritten law in force and live in the community in accordance with the principles and rule of law.

3. Reform Of Behavior And Bureaucracy

a. Progressive Police

The police is the front guard that must be an role model, guarding, acting and implementing laws to properly apply the law, on the track and not on the box. Thus, their knowledge has to be multidisciplinary even interdisciplinary, because they are dealing with heterogeneous society with various kinds of discipline, character and culture that complex and complicated. First law enforcement stage is in the hands of the police, so that good law enforcement begins in this stage. When the police can not be fair then the next process will experience obstacles and to anticipate it needs to be reformed both personnel and culture.

Cultural reform should establish a responsive police force and for that reason the police already have a Quick Wins program that is an accelerated and transformed police program. The responsive character must be supported by post-bureaucratic bureaucracy which conceptually prioritizes the purpose not the procedure so as not to be confined by the rule (not rule bounded-ness), so that the responsive character can encourage and lead into progressive police which ultimately creates security and order nationally as the Grand Strategy Police.

b. Progressive Prosecutor

The prosecution should be a progressive institution. It applies progressive laws, which dare to make breakthrough strategies. Progressive prosecutor is a prosecutor who has the criteria, free-fell, strategies, break

7 A. Muladi, Peran Politik Hukum dalama Penegakan Hukum Yang Berkeadilan, dalam Jurnal Hukum Adi, Vol. 2, Nomor 2, Jakarta, 2011, Hlm. 160

8 A. Muladi, Peran Politik Hukum dalama Penegakan Hukum Yang Berkeadilan, dalam Jurnal Hukum Adi, Vol. 2, Nomor 2, Jakarta, 2011, Hlm. 160

9 M. Syamsudin, *Budaya Hukum Hakim Berbasis Progresif*, Kencana Prenada Media Group, Jakarta, 2012, Hlm 258.

through habits and brave bureaucracy.

Given the character and elements of the prosecutor's office is a bureaucratic, centralistic, hierarchical and command system, this character causes this institution to be vulnerable to abuse of power, this is due to the doctrine of "the prosecution in one" (*een en ondeelbaar*). It is so prone to intervention by high and high leaders are very open.

c. Progressive Judge

In the broad legal system, the law lies within the social sub-system, so that law enforcement is an integrating mechanism. In Indonesia the function of integration is represented by a judge so that the judge assumes the responsibility to bring justice to the people and the truth (searching for the truth) to create social integration. As a figure that integrates the interests, differences and frictions so that it must be equipped with adaptive function input of the system from the economic, political, cultural subsystem through conversion so that the resulting decision can meet the elements of efficiency, legitimacy and justice.

To get a truly independent judge, unconstitutional (*la bouche de la loi*) and free from internal and institutional internal factors in this case pressure groups such as Press, NGOs, judges may created a new law known as the "Judge Made Law" principle of the Common Law legal system.

Judge authority in court or otherwise is known as AUTOPOIETIC.¹⁰ They have characters as follows:

1. The court produces the basic elements that constitute the system itself (self producing).
2. The Court organizes itself (self organizing) in two ways by organizing its own boundaries and organizing its own internal structure.
3. The Court sets its own reference (self referential) as a reference for self-respect. The Court has a work based on a separate culture that reflects the characteristics of the Corps.
4. The court is a closed system, meaning that there is no direct relationship between the court and its environment, including pressure groups, such as the Press, NGOs and other institutions of both government and private sectors.

It inspires and strengthens the argument of the independence of the court and the judiciary's freedom not to be intervened by the pressure group, so that the judge's authority remains in his hands so it is not appropriate if the judge in deciding cases is locked up by "Trial by The Press or even" Trial by The Rule " "Without The True"¹¹. So that "Judicial power" should be implemented and progressively progressed, particularly in handling criminal cases that have been agreed upon as extraordinary crimes, so that the role of police, prosecutors, judges and advocates should be shouldered working together in eradicating corruption through its four enforcement components namely the substance component (UU), the structural component (institutional), the legal culture and leadership. Two main things in progressive law that must be addressed is the legal culture of law enforcement officers, especially judges and their leadership. The legal culture of judges is very influential

¹⁰ Adopted from system theory proposed by oleh Niklas Luhman, George Ritzer dan Douglas J. Goodman, *Teori Sosiologi Modern*, Penerjemah Alimandan, Kencana, Jakarta, 2005, Hlm. 244-245.

¹¹ Satjipto Rahardjo, *Hukum dan Perilaku (Perilaku Baik adalah Dasar Hukum Baik)*, PT Kompas Gramedia, Jakarta, 2009, hlm. 58.

in the examination activities as well as in the preparation of legal considerations (legal reasoning) in deciding the verdict. While conflict of interest will whack an unstable judge and interfere with power or influence of interest. Hence, the responsive legal culture is to have the soul of the fighter (vigilante) and braveness (braveness) so that the decision is progressive character.

Implementation of the Progressive Legal Theory in Judicial Decisions

1. Function and Objectives Of Decisions

The function and purpose of the judge's verdict is to settle the case among the litigants and related and related legal matters among others fairly. The judge's decision generally generates new circumstances and new facts so that the judge's decision can portray its function and purpose as a renewal.¹²

Law reformers by: First, exploring laws that are not clearly stated in the prevailing laws and regulations and the values of justice born out of people's lives. Second, follow the norms and rules of the unwritten law that developed in the community at the same time pay attention to the values of justice. Third, understand the legal norms and rules of justice that thrive in everyday life.

As stated by Bagir Manan, judges or jurisprudence plays a very important role in policy or legal politics that always incorporates the courts as an object of legal development.¹³ While the fostering and development of jurisprudence lays in the highest court of law in this case the Supreme Court, so that the jurisprudence made by the judge will determine where the law will be taken.

Jurisprudence is one of the sources of law as well as the Constitution, Law, Customary Law, Customs, Treaties or Covenants and Doctrines including the opinions of jurists. Jurisprudence can be used as a reference as follows:

1. Formatting of laws;
2. Taking judgments on the same matters by other judges on matters that have not been regulated or not yet found to be legal;
3. Developing law science through judicial decisions

The position of jurisprudence as the source of the law of, we can see how much its role in the development of national law. For this reason the judge has an obligation to create jurisprudence on the issues that have not been regulated and the lack of clear understanding. In addition, jurisprudence in essence has a function as follows:

1. With the same decisions in similar cases, the same legal standard can be enforced, in the case that the law does not regulate or has not regulated the solution in question.
2. With the same legal standards, it can create legal certainty in the community.
3. By creating a sense of legal certainty and equality of law against the same case, the judge's verdict will be predictable and transparent.

¹² Kata Pembaharuan, Anton M. Moeliono, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1996, Hlm. 109.

¹³ Bagir Manan, *Hakim Sebagai Pembaharu Hukum*, dalam *Varia Peradilan* No. 254, Januari 2007, Hlm. 6

With the existence of legal standards, it can minimize disparities incidence in different judgments for the same case and when it happens then patterned as a variable casuistically (case-by-case).

2. Legal Discoveries in The Judicial Decisions

Urgency of legal discovery by judges, namely First, the law always lags behind the development of society. Secondly, the judge should not be allowed to refuse a case with no legal reason. On this basis the judge is forced to find the law in its performance that always seeks to overcome various social problems in society that changes from day to day more rapidly so-called agent of change.

The purpose of legal existence is to create legal certainty and public order. Humans create as much as possible justice in the social life of society. Fair is the sole of the eyes of God and it is God who can apply true justice. The field of law is a container in order to create the order of justice and truth that emphasizes the legal material towards the realization of the national legal system.

Methods and stages of judges in the discovery of the law that is ¹⁴: First, Constar stage that is cons true whether or not events, logical, legal control and proof. Second, the qualification phase, it means to qualify an event. Third, the constituent stage is the stage of the judge establishing the law.

Indonesia as a developing country is always trying to carry out the development of national law, although in practice it is loaded with the interests and influence of the politics of the ruler, so speaking about the development of law, the orientation is on codification and unification of national law. Explicitly the meaning is how important the position of the judge to encourage the implementation of legal reform in the midst of society through its verdict.

3. Decision of A Progressive Judge (Examples)

The implementation of progressive law requires courageous, high integrity, courageous judges to come out of the order, free from conflict of interest, freeing up all matters in creating justice, upholding human rights and giving and creating justice closer to true justice.

In essence of law is not a rule of free value, advantages and disadvantages depending on the man who runs as executor so that the law does not run separately because the law and human beings can not be separated. In short the law has its own logic, its own purpose and its own will. Thus it is clear that the importance of the judge's decision in the midst of society in legal reform.

Examples of progressive judiciary implementation are as follows:

1. Angelina Sondakh, Member of the House of Representatives, from a 4-year sentence to 12 years in prison plus replacement money.
2. Zen Umar, Director of PT Tranka Kabel, from a 5-year sentence to 15 years in prison.
3. Tommy Hindratno, Employee Directorate of Taxes, from sentence 3 years 6 months to 10 years in prison.
4. Budi Gunawan, Prospective Chief of Police, Suspect of corruption case, win in pre trial.

¹⁴ Ahmad Ali, *Menguak Tabir Hukum*, kencana Prenada media Group, Jakarta. 2015, Hlm 174.

CONCLUSION

4. Summary

From the description of the paper can be drawn conclusion as follows:

- a. Police are the front guard that should be a role model of guarding, acting and implementing laws to apply the law properly, on the track and not on the box. His knowledge must be multidisciplinary and even interdisciplinary because he is dealing with heterogeneous communities with a wide range of disciplinary skills, characters and cultures are complex and complicated
- b. The prosecution should be a progressive institution, which applies progressive laws, who dare to make breakthrough strategies. Progressive Prosecutor is a prosecutor who has a criterion, free-feel, free from conflict of interest, strategies, break through habits and brave bureaucracy.
- c. Judges have a dominant role in deciding cases so it is obligatory to provide a sense of justice for every justice seeker, who is right and who is wrong. The demands are integrity, morals, ethics and have good legal policy analysis skills as well as mature and progressive thinking in the decision
- d. Implementation of progressive law theory requires judicial decisions to refer to the objectives of the law, that is the benefit of humanity that satisfies the sense of justice and legal certainty, so that it takes a judge who is really independent, not bound by legislation (*la bouche de la loi*) and free from internal and external factors in this case pressure groups, such as the Press, NGOs, so the judge's answer must be able to realize progressive laws.
- e. Progressive law theory asserts that law enforcement by Indonesian judges should serve human interests as the subject of law, in order to avoid the loss of man by self-created law. Therefore, the orientation is on the values of justice and truth that consider the benefit of human beings.
- f. The position of jurisprudence as the source of the law of how much its role in the development of national law. For this reason the judge has an obligation to create jurisprudence on the issues that have not been regulated and the lack of clear understanding.
- g. The implementation of progressive law requires courageous, high integrity, courageous judges to come out of the order, free from conflict of interest, liberate the empire in creating justice, lead to high human rights and provide and create justice to the fullest extent possible to true justice.

5. Suggestions

- a. Progressive law theory needs to be campaigned especially to law enforcement in particular and society in general.
- b. Progressive law theory should be a compulsory curriculum for the legal education program in particular and other educational programs generally.
- c. For the legislature as a legislator in order to give the judges wisdom in implementing progressive legal theory.
- d. Indonesia should be revolutionary but systematically and structured to adopt progressive law theory in law enforcement, in harmony and in keeping with the dynamics of the social, cultural and economic times so as not to be left behind.

REFERENCE

- Achmad Ali, *Menguak Tabir Hukum*, kencana Prenada Media Group, Jakarta. 2015.
- Achmad Ali, 2001, *Keterpurukan Hukum di Indonesia*, Ghalia Indonesia, Jakarta 2001.
- Anton M. Moeliono, Kata Pembaharuan, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1996, Hlm. 109.
- Abdul Manan, *Penerapan Hukum Acara Perdata Dilingkungs Peradilan Agama*, Prenada Media, Jakarta, 2005.
- A. Muladi, *Peran Politik Hukum dalam Penegakan Hukum Yang Berkeadilan*, dalam Jurnal Hukum Adi, Vol. 2, Nomor 2, Jakarta, 2011.
- Amran Suadi, *Implementasi Teori Hukum Progressif dalam Penegakan Hukum Oleh Hakim Indonesia*, Seminar Unissula, Semarang, Sabtu, Tanggal 12 Agustus 2017.
- Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Balai Penerbitan Undip, Semarang, 1996.
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2002.
- Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana Edisi Revisi*, Citra Aditya Bakti, Bandung, 2005.
- Bagir Manan, *Hakim Sebagai Pembaharu Hukum*, dalam Varia Peradilan No. 254, Januari 2007.
- Nyoman, Sarikat Putra Jaya, *Kapita Selekta Hukum Pidana*, Badan Penerbit Undip, Semarang, 2005.
- Diadopsi dari *Teori Sistem* yang dikemukakan oleh Niklas Luhman, George Ritzer dan Douglas I Goodman, *Teori Sosiologi Modern*, Penerjemah Alimandan, Kencana, Jakarta, 2005.
- Leden Marpaung, *Unsur-unsur Perbuatan Yang Dapat Dihukum, (Delik)*, Jakarta, Sinar Grafika, 1991.

The 5th International Conference And Call Paper

Mahkamah Agung RI, *Cetak Biru Pembaharuan Peradilan, 2010-2035*, Jakarta, Mahkamah

Agung RI, 2010.

Mukti Arto, *Praktek Perkara Perdata pada Pegadilan Agama*, Pustaka Pelajar, Yogyakarta,

2007.

Moeljatno, *Asas-asas Hukum Pidana*, Cetakan Kedua, Bina Aksara, Jakarta, 1984.

M. Syamsudin, *Budaya Hukum Hakim Berbasis Progresif*, Kencana Prenada Media Group,

Jakarta, 201.

Nyoman, Sarikat Putra Jaya, *Kapita Selekta Hukum Pidana*, Badan Penerbit Undip,

Semarang, 2005.

Sedarto, *Hukum dan Hukum Pidana I*, Alumni, Bandung, 1986.

Suteki, *Masa Depan Hukum Progressif*, Thafa Media, Yogyakarta, 2015.

Suteki, *Menjadi Penegak Hukum progrssif*, Seminar Unissula, Semarang, Sabtu Tanggal 12

Agustus 2017.

Satjipto Rahardjo, *Hukum dan Perilaku (Perilaku Baik adalah Dasar Hukum Baik)*, PT

Kompas Gramedia, Jakarta, 2009.